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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,298	10/31/2000	Steven A. Bogen	1159.1004-005	3668

21005 7590 12/07/2006

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EXAMINER

ALEXANDER, LYLE

ART UNIT PAPER NUMBER

1743

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/702,298	BOGEN ET AL.	
	Examiner	Art Unit	
	Lyle A. Alexander	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3-18 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Muller et al. (USP 5,273,905).

Muller et al. teach a method and apparatus for the sequential multi-stop processing of slides for staining comprising a liquid dispensing means, heating means and aspiration means. Column 4 lines 4+ teach microprocessor control of both the heating and movement of the sample to chambers of different volumes based upon desired analysis. This has been read on the claimed "... dispenser orifice and slide housing being capable of relative movement to each other under microprocessor control ..." (e.g. the dispensing orifice is move to a different chamber based upon the analysis and volume required). Additionally, figures 16-17 teach movement of block(212) against slide(217) by frame(213) and links(221). The fluid transfer line(232) moves relative to the block(212) and has been read on the new claim language "... being capable of relative movement between each other ...". Column 4 lines 27+ teach multiple processing stations that are modular in design having "quick connect/disconnect" means to fluidic and electrical supplies which has been read on the claimed "... hose transport mechanism...". Column 15 lines 8+ teach block member(37) with good heat transfer characteristics is adjacent to the glass slide which has been read on the claimed "heater"/"heating element is adjacent to the slide". Column 66 lines 54+ teach the fluid is remove "either by suction or by flowing a

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washing fluid or the like through the chamber..." which has been read on the claimed "liquid aspirator".

Response to Arguments

Applicant's arguments filed 2/22/06 have been fully considered but they are not persuasive.

(A) Applicants' state Muller fails to teach the claimed "... dispenser orifice and slide housing being capable of relative movement to each other under microprocessor control ...". The Office does not agree and maintains the dispenser orifice moves overtop of each slide and creates a water tight seal. This teaches relative movement between the dispenser orifice and the slide housing and has been properly read on the instant claims. Additionally, figures 16-17 teach movement of block(212) against slide(217) by frame(213) and links(221). The fluid transfer line(232) moves relative to the block(212) and has been read on the new claim language "... being capable of relative movement between each other ...".

(B) Applicants' state Muller does not teach changing the volume required for each chamber. These remarks are directed to the method of intended use of the apparatus and are of no patentable moment with respect to the pending apparatus claims.

(C) Applicants' state Muller teaches use of a gasket between the slide and the housing and the instant invention does not require the gasket for sealing. These remarks are not commensurate in scope with the pending claims that use open

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language (e.g. comprising) and does not exclude additional element taught by the prior art.

(D) Applicants state the instant claims focus on the relative movement of the slide housing and the dispenser orifice. The Office maintains the cited prior art properly meets these limitations.

Applicants' remarks and amendments were convincing to overcome Copeland.

This is a RCE of applicant's earlier Application No. 09/702,298. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1743


